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Concluding observations on the fourth periodic report of Israel

Addendum

Information received from Israel on follow-up to the concluding observations*

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Concluding Observation no. 9

Non-application of the Covenant in the "Occupied Palestinian Territory"

1. As has been previously clarified, it is Israel's position that the International Convention on Civil and Political Rights (hereinafter: "ICCPR" or "the Convention") is not applicable beyond a state's national territory. For an elaboration of this position, please see sections 44-48 of Israel's 4th Periodic Report.[1]

2. Notwithstanding this position, in the spirit of openness with which Israel approaches the constructive dialogue with the honorable Committee, we respectfully present the following information.

Planning and Zoning in the West Bank

3. Against the background of the complex legal reality that was created following the Six Day War, Israel took upon itself to subject its military control of the West Bank to the *Hague Regulations Respecting the Laws and Customs of War on Land of 1907* ("the Hague Regulations"), and, accordingly, to maintain the laws that were in force in this area prior to June 1967.[2]

4. Subsequently, the planning and zoning laws applicable to the West Bank, as well as the regional zoning plans that derive from them, are mostly the original laws that were in effect prior to June 1967.[3] Indeed, the main source of law is the *Jordanian Planning of Cities Villages and Buildings Law (No. 79)* of 1966. These laws apply indiscriminately to all persons residing in the West Bank.

5. Note that the vast majority of Palestinians in the West Bank reside in Areas A and B, which include all Palestinian urban centers and most Palestinian village clusters. In those areas, the responsibility for planning and zoning has been transferred to the Palestinian Authority (hereinafter: PA), as part of the Oslo Accords.

6. In the remaining areas, the Central Supervisory Unit of the Civil Administration and other Israeli authorities in the West Bank operate in order to enforce the law and the local zoning plans without distinction between Israeli citizens or Palestinians residents.

7. The Civil Administration is constantly developing and advancing outline plans for the Palestinian and Bedouin populations in the West Bank. It is working on the development of roughly 90 different plans, which are at different stages of the procedural process. Approximately 20 of these plans have been prepared, approved for advancement and are currently in various stages of the statutory process. An additional ten plans have been prepared and are awaiting various approvals prior to their submission to the planning committees and the rest of the plans are currently classified as works in progress.

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[1] State of Israel, 4th Periodic Report to the Committee on Civil and Political Rights Concerning the Implementation of the International Convention on Civil and Political Rights, *see also*: http://www.justice.gov.il/Units/InternationalAgreements/IA/Reports/ReportsUnCommittees/Israel%20-%20ICCPR%204th%20Periodic%20Report%20-%2010.10.13.pdf.

[2] According to Article 43 of the Hague Regulations, the Military Commander is tasked with ensuring security and public order. Within the scope of these duties, the Military Commander and the institutions that he appoints are in charge of enforcing the planning and building laws which were in place prior to 1967.

[3] Note that at times the Military Commander is required to implement certain updates and amendments to the laws that apply in the West Bank. *See, for example, The Procedure regarding the Incorporation of West Bank Residents in the Planning Process (Judea and Samaria), 2014*, that will be addressed below.

8. The foregoing is expected to lead to the legalization of dozens of structures that had been constructed illegally. Moreover, in principle, the Civil Administration refrains from enforcing the law regarding illegal construction where an outline plan has been approved or even when a plan is going through the initial stages of the statutory process, even if a person initially violated the law and intentionally built the structure without a building permit.

Palestinian Participation in the Planning Procedure

9. The Civil Administration and the other relevant Israeli authorities operating in the West Bank are actively working to promote the participation of the Palestinian population in the planning process. The Civil Administration has invested substantial resources in an attempt to involve the Palestinian population in the planning process and thus optimize the outcome. Such integration is attempted at all stages of the process, including the preliminary stages of planning, the planning itself and the transition to the approved plans.

10. To this end, in September 2014, the Head of the Civil Administration introduced a new procedure titled "*The Procedure regarding the Incorporation of West Bank Residents in the Planning Process (Judea and Samaria), 2014*", which requires the relevant bodies to provide a formal setting for interested parties to present their positions regarding issues of planning and zoning, which in turn must be considered by the committee.

11. This procedure was examined by the Israeli Supreme Court[4] and was deemed to constitute appropriate involvement of the local population, enhancing effective Palestinian participation in the planning process. According to the Court's decision, this procedure will be re-examined and evaluated in the near future by the relevant authorities.

12. Unfortunately, information gathered clearly shows that the PA is applying great pressure on the Palestinian population, aimed at preventing any productive cooperation with the Civil Administration or the Civil Administration's planning authorities in the West Bank. The PA encourages Palestinians not to cooperate with the Israeli planning institutions and in fact actively hinder any cooperation with the planning and construction initiatives intended to promote the needs of the Palestinian population.

Enforcement

13. All enforcement procedures are subject to due process guarantees, such as the right to a fair hearing and the opportunity to take measures to rectify an infringement of the law (for example, by filing a request for a building permit or by proposing an amendment to a zoning plan).

14. Moreover, when an appeal is denied, no enforcement action is taken for a period of time that allows the submission of a petition to the High Court of Justice.

15. These judicial guarantees are available to everyone without any distinction based on religion, race or ethnicity.

16. The data concerning demolition of illegal construction reveals that throughout 2013 and 2014, 29% and 43% respectively of the new cases concerning illegal construction by Palestinians resulted in demolitions. Slightly higher demolition rates applied to Israelis residing in the West Bank, namely, 41% and 48% of the new cases concerning illegal construction in 2013 and 2014, respectively. Claims regarding discrimination in enforcement do not correlate with this data and are unfounded.

[4] H.C.J. 5667/11, *Dirat — Rafayia Village Council et. al. v. The Minister of Defense et. al.* (9.6.15).

Planning and Zoning for the Bedouin Population Residing in the West Bank

17. Over the years, the Civil Administration has operated extensively in order to accommodate the living conditions of the Bedouin population in the West Bank and to allow the establishment of permanent places of residence suitable to their specific needs, accommodating future development resulting from natural growth. Of the outline plans mentioned above, six are specifically designed to provide for the Bedouin population. These plans are currently in advanced stages of the statutory process.

18. In light of the unique tradition and culture of the Bedouin population, the planning undertaken for their benefit seeks to provide them with living arrangements compatible with the modern age while recognizing and providing for aspects of their lifestyle. This is done by mapping the population's preexisting construction clusters, assessing, *inter alia*, the unique elements of their lifestyle and their attachment to different areas. Based on these assessments, a customized plan is crafted to tailor to their way of life and needs, taking into account their future natural growth. These plans are developed with the aim of preserving each community's traditional way of life and geographical proximity to its current location. It should be stressed that when illegal construction is broad and geographically scattered, major difficulties arise in fulfilling the needs of the population in terms of the provision of energy and water; maintenance of functioning sewer and transportation systems; proper services and adequate infrastructure. Thus, a minimal level of centralization is essential.

19. The Civil Administration devotes great resources and invests undeniable amounts of resources in direct communications with the population in an attempt to integrate the community in characterizing their own wants and needs in order to provide the optimal plans for them. Such integration is attempted in all stages of the process, from the preliminary stages of planning, continuing with the planning itself, and concluding with the transition to the approved plans. As stated above, in 2014, the IDF and the Civil Administration introduced a specific procedure with the aim of ensuring the participation of the local population in planning procedures in the West Bank. For additional information, please see subtitle "Palestinian Participation in the Planning Procedure" on page 5 above.

Sealing and Demolition of Terrorists' Houses

20. Unfortunately, since its establishment, Israel has been under constant terrorist threats and attacks. In times of intense terrorist attacks that threaten the lives of Israeli citizens, Israel, as part of its obligation to ensure the right to life of its civilians, is forced to adopt exceptional measures in order to deter potential terrorists.

21. As explained above, in principle, the laws that were in force in the West Bank prior to June 1967, remain in force. Regulation 119 of the Defense [Emergency] Regulations, 1945, constitutes the basis for the issuance of orders by the Military Commander for taking measures, including, in severe cases, to demolish a property that is linked to perpetrators of severe acts of terrorism. Such orders are issued following an assessment made by the Military Commander indicating the need for the said measures to deter potential perpetrators from committing similar terrorist acts.

22. The exceptional nature of the measures adopted under Regulation 119 is always taken into account. Regulation 119 is used, both within Israel and in the West Bank, in times of escalation of terrorist activity, as a response to outbreaks of terrorist activities aimed against Israeli civilians. Following internal deliberations, in early 2005, Israel suspended the use of such measures. In 2008, following a sharp increase in terrorist attacks originating from parts of Jerusalem, limited measures were employed for a brief period only, in the eastern neighborhoods of Jerusalem. Over the period between 2008 and 2014, Israel had no need to resort to the exceptional step of ordering the demolition of terrorists' houses.

23. Following several attacks — including the murder of a police officer, the 2014 kidnapping and murder of three Israeli teenagers and the 2015-2016 wave of terrorist attacks — Israeli authorities decided to allow the use of the sealing and demolition of houses for purposes of deterrence, in line with Regulation 119, although only in specific and extreme circumstances.

24. The need to make limited use of such measures in the context of the current wave of violence stems from the unique challenges that Israel faces in the fight against terrorism. The current wave of attacks largely consists of acts by so-called "lone wolf" terrorists, who operate individually and unexpectedly, making it very difficult to prevent the attacks through intelligence gathering or other traditional measures. Deterrence becomes an essential tool in preventing these terrorist attacks.

25. Such measures are used in a relatively small number of cases, in a focused and non-arbitrary manner. Demolition or sealing orders are regularly brought before the High Court of Justice. In its judgments, the Court has allowed the use of Regulation 119 in very specific and narrow circumstances. The Court has also reiterated the need to periodically review the use of the Regulation, taking into account updated information regarding the effectiveness of the measures and any changes in the security situation. In a number of cases, the Court quashed demolition orders, or imposed limitations on the requested measures, due to proportionality or other considerations.

26. Enforcement Measures against Illegal Construction in the Eastern Neighborhoods of Jerusalem.

27. Illegal construction harms the local population, as it does not take into consideration planning policies and parameters that are needed to ensure quality of life, the welfare of the population and public needs. Enforcement measures against illegal structures are adopted in accordance with legal guarantees and following due process, subject to judicial review and the right to appeal, and are decided upon without distinction based upon race or ethnic origin.

28. The authorities exercise discretion in the execution of demolition orders and give priority to the demolition of illegal structures that pose an obstacle to the development of the city, for example, an illegal structure that blocks a sewer pipe system, a planned school, access roads, etc.

29. As of November 23rd, 2016, 64 demolition orders against illegal structures were carried out by the Jerusalem Municipality in the eastern neighborhoods of Jerusalem, of which only nine were inhabited (compared to 55 such orders in the western neighborhoods of which nine were inhabited). In 2015, 44 demolition orders against illegal construction were carried out by the Jerusalem Municipality in the eastern neighborhoods of Jerusalem, of which only six were inhabited (compared to 50 such orders in the western neighborhoods of which 14 were inhabited). In 2014, 35 demolition orders against illegal construction were carried out by the Jerusalem Municipality in the eastern neighborhoods of Jerusalem, of which only nine were inhabited (compared to 33 such orders in the western neighborhoods of which 14 were inhabited).

30. During 2014, a new procedure for demonstrating proprietary rights was initiated in order to expedite the issuance of building permits, thus reducing one of the major barriers to obtaining a building permit. This procedure was initiated with the aim of increasing the number of building licenses granted and reducing the need for demolition orders.

Involvement of the Arab population in the planning and zoning process

Outline Plans and basic planning for the Arab population throughout Israel

31. As of December 2016, 131 of 133 Arab localities have approved outline plans. Of these 133 localities: 71 have approved updated outline plans (from 2004 and onward); 17 have new outline plans undergoing statutory approval. It is expected that in the next two years, the approval procedures will be completed. New outline plans are in the process of being prepared for an additional 21 localities, including updating three of the above mentioned approved plans. Outline plans for 12 additional localities is scheduled to begin during 2017. Note that these updated outline plans, excluding those scheduled to be prepared in 2017, comprise 96% of the Arab population in the said 133 localities.

32. As of December 2016, 95 of the aforementioned outline plans for the Arab localities were promoted by the National Planning Administration. The rest of the plans are promoted by the local authorities, local councils or other governmental administrations.

33. The outline plans promoted by the Ministry of Interior have added, on average, 70% to the localities' existing development lands, in addition to existing areas within the locality which are approved but not yet developed.

34. The vast majority of the outline plans allow for a larger population than the population prediction for the relevant planning period.

35. In order to allow the construction of a large number of residential units in a short period of time, the Planning Administration is currently conducting a pilot study, in which it is promoting detailed planning in two Arab localities with several planning challenges (such as the need to divert national infrastructures etc.). This is in addition to the above-mentioned approval of outline plans.

36. In accordance with Government Resolutions No. 2332 (of December 14, 2014) and 959 (of January 10, 2016), concerning the Development and Empowerment of the Druze and Circassian Localities for the Years 2016-2019, which include the preparation of detailed plans for localities of these populations, the Planning Administration is promoting such detailed plans concerning private lands in 13 localities.

Infrastructure as a Basis for Development

37. The updated outline plans are aimed at providing solutions for residential areas, public areas, public open spaces, employment areas, commercial areas etc., as well as preparing the infrastructures needed for the planned and existing development. These solutions take into account a period of at least 20 years.

38. Note that the allocation of parks and open spaces are sometimes not made a priority by the locality and there are many cases in which approved open spaces have been converted to residential areas, or illegal private construction, contrary to the outline plan.

39. One of the common reasons for delays in approving outline plans — in both Jewish and Arab localities — is the lack of infrastructure at the regional level (such as a sewage system etc.). This issue was addressed in Government Resolution no. 208 of July 2015, which included a decision to promote a regional sewage-master plan.

Implementation of the Outline Plans

40. The implementation of the outline plans is carried out by means of detailed plans, which are promoted by each and every locality. Since many of the Arab localities find it difficult to promote detailed plans, and since these plans are essential for obtaining building permits, the National Planning Administration has taken upon itself to initiate a pilot of

detailed planning, granting budget and professional support for the promotion of 45 detailed plans in 12 Druze localities. A similar project is to be carried out for other Arab localities.

41. The position of the National Planning Administration is that lack of an updated outline plan should not delay the approval of a detailed plan that is compatible with national planning policy. Thus, in the majority of localities that do not have an approved updated outline plan, detailed plans were and continue to be promoted.

42. Note that there are no gaps between the resources that were allocated for planning in central areas and resources that were allocated for planning in peripheral areas.

Facilitating Housing Issues

43. On July 2015, the Government adopted a set of recommendations included in a comprehensive report analyzing housing issues in Arab localities. This Government Resolution (no. 208) includes close to 40 sections dealing with different aspects of this subject, including, among other things: promoting detailed planning and facilitating its approval, specifying measures to increase suitable land for housing development, facilitating registry issues especially in built-up areas and increasing the number of independent Arab building and planning committees and strengthening them.

Planning for the Bedouin Population

44. In regards to planning for the Bedouin population — there are 18 Bedouin localities with approved outline plans, including the city of Rahat, Lakiya, Hura, Kuseife, Tel-Sheva, Segev Shalom and Ar'ara. All of these plans include infrastructure such as schools, health clinics, running water, electricity, roads, pavements, etc.

45. An additional 11 localities that are under the jurisdiction of the Neve Midbar and A-Kasum Regional Councils also have approved outline plans.

46. In addition, the planning procedures for six additional localities are ongoing.

47. The strategic work of examining and setting rules for the planning of construction solutions for the Bedouin population in the Negev has been undertaken and completed. The work included the collection and presentation of demographic information and planning data. Following this strategic work, recommendations were formulated to expand existing localities and establish new ones, whilst regularizing some Bedouin localities at their current location. The report of stage one of this strategic work, which includes these recommendations, was submitted to the Ministry of Agriculture and Rural Development in November 2015.

48. In regards to the planning relating to the rest of the clusters in the Bedouin diaspora, following this work, ten leading planning companies were recruited to conduct feasibility studies with the planning areas and to examine special planning solutions for the population in that region. This process is being conducted with the participation of the population in each region and with emphasis on land arrangement and a wide range of housing arrangements. Currently, these companies are conducting field surveys and formulating the resulting data into planning recommendations that will be examined by the Authority for the Regularization of the Bedouin Housing Situation in the Negev, currently handling the bulk of issues in this area. This course of planning, with the special emphasis placed on the participation of the Bedouin population, is unprecedented in Israel.

49. Please note that in almost every planning team there is a position of a social advisor who is a senior member of each team, and his/her responsibility is to maintain contact between the planning team and the local population. The social advisor conducts surveys with the local population; examines the population's desires, requirements, needs and expectations, and later presents them to the planning team. Following the planning stage,

the social advisor presents the plan and the planning conception to the local population, in order to receive its view and remarks and to finalize the relevant planning solutions.

50. The Government encourages movement to regulated localities (regardless of the localities' nature as a city, town, village, etc.) by providing unique financial benefits to all residents of the Bedouin diaspora who pursue such movement, regardless of their economic situation and independent of any entitlement test. These benefits include, *inter alia*, the provision of land plots for free or at a very low cost, and compensation for the demolition of unauthorized structures.

51. The Bill for the Regulation of the Bedouin Localities in the Negev — Currently, the Bill is not being promoted by the Government of Israel.

52. In accordance with Government Resolution No. 2025 of September 23, 2014, the Authority for Planning and Development of Bedouin Housing in the Negev in the Ministry of Agriculture and Rural Development, is currently in the final stages of the preparation of a strategic plan for the socio-economic development of the Bedouin localities in the Negev. The main goals of this plan are the socio-economic advancement of the entire Bedouin population in the Negev, regularization of the Bedouin localities in the Negev and providing solutions for land claims. As a part of this process, the Authority has held meetings with prominent figures of the Bedouin populations in order to hear their views regarding housing solutions and the regularization of Bedouin localities.

Concluding Observation no. 12

GOI Reply

53. The Gaza Strip in not a part of the State of Israel, and as any other state, Israel has the right to control entry, exit and passage through its borders. This is true all the more so given that the Gaza Strip is controlled by a hostile terrorist organization which is in armed conflict with Israel.

54. Please note that the restrictions placed on movement to and from the Gaza Strip apply only to passage across the border with Israel. There remains the possibility of direct passage of goods and people through the Rafah crossing, which is controlled by Egypt on one side and by Hamas on the other. Israel has no control over this southern entry point into Gaza.

55. Despite the possibility of passage through the Rafah crossing, Israel has significantly eased restrictions on the entry of goods and persons to the Gaza Strip, as described below:

56. *Goods* — Israel is currently permitting the entry of almost any type of goods, as well as humanitarian aid, into the Gaza Strip, except for munitions and dual-use materials. The entry of dual-use materials, which are materials that can be used for terrorist acts against Israel, requires a designated permit and is subject to supervision mechanisms.

57. As of October 31, 2015, on an average day, over 700 truckloads of goods are transferred into the Gaza Strip.

58. Since September 2014, Israel has permitted the export of goods originating from the Gaza Strip to the West Bank (mainly agricultural products, furniture, textile products and iron) and enables the export of such goods abroad and even into Israel (mainly agricultural products and recently also furniture, textile products and iron).

59. *Building Materials* — Building materials, specifically concrete, are dual-use materials, as was demonstrated during the summer of 2014 when Hamas made use of such materials in order to launch rockets against Israel and to build a web of offensive underground tunnels. Israel therefore supervises the transfer of building materials in order

to defend itself against the construction or rehabilitation of these offensive tunnels or other infrastructures that may be used for terrorist purposes.

60. Despite the risk, Israel permits the transfer of building materials into the Gaza Strip. Such transfer is conducted through the Gaza Reconstruction Mechanism led by the Palestinian Authority with the assistance of United Nations agencies and with Israeli supervision.

61. Between October 2014 and May 2016 over 4.8 million tons of building materials, including concrete and aggregates, were transferred to the Gaza Strip.

62. In addition, as of May 16, 2016 the entry of building materials required for the construction of 127,216 homes were approved, of which 81,026 constructions were completed and 19,974 are currently under construction. In addition, materials required for the building of 12,926 new homes were also approved. Of the new homes to be constructed, over 6,570 have all or part of the building materials needed to complete the construction.

63. The transfer of building materials was also approved for 696 large scale building projects, some funded by the Palestinian Authority and some by foreign countries or international organizations. These projects include the construction of infrastructures such as roads, water, electricity, public buildings, medical facilities etc. Of these large scale projects, 109 have been completed and 407 are under construction.

64. It is important to note that 98% of the requests for building materials were approved. The remaining 2% were declined for technical reasons and not on security grounds.

65. Unfortunately, despite the supervision mechanism and cooperation with the United Nations organization, terrorist organizations often manage to acquire dual-use materials that have been allowed into the Gaza Strip for the benefit of the civilian population.

Movement of Persons

66. Over the last two years, with the aim of encouraging the local economy, Israel has increased the number of entry permits granted to merchants/businessmen. Nearly 800 merchants are permitted to exit and enter the Strip every day.

67. The number of permits issued to members of the Palestinian Authority official sports teams has also increased.

68. Israel provides permits for 200 persons each Friday in order to participate in the prayers on the Temple Mount (Haram El-Sharif).

69. Permits are also issued for Gaza residents to travel abroad in order to participate in conventions, special medical treatments abroad, and to pursue academic studies — mainly for advanced academic degrees. As a gesture of goodwill toward the Palestinian Authority, exit permits from the Gaza Strip for academic studies were granted on several occasions to students studying for first and second degrees.

70. In addition to an increase in the number of Palestinian employees of international organizations that are permitted to enter into Israel and the West Bank in the course of their work, Israel also increased the number of medical personnel and teams authorized to work in hospitals and undergo professional training in the West Bank and Israel.

71. In total there are approximately 1,200 persons passing through the Erez Crossing each day.

Concluding Observation no. 14

GOI Reply

The Crime of Torture

72. Acts and behaviors defined as "torture" under Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: "CAT") and Article 7 of the Covenant on Civil and Political Rights (hereinafter: "ICCPR") may constitute offences under the Israeli *Penal Law* 5737-1977 (hereinafter: the "*Penal Law*"). For further information, please see Sections 356-7 of Israel's 4th Periodic Report.

73. On 14 June 2010 the Israeli Government appointed the Public Commission to Examine the Maritime Incident of May 31, 2010 (hereinafter "the Turkel Commission").[5]

74. In February 2013, the Turkel Commission recommended, among other things, incorporating an offence prohibiting torture into the Israeli *Penal Law* (Commission's Recommendation No. 1).[6]

75. On January 5, 2014 the Israeli Government appointed a team headed by Dr. Joseph Ciechanover to review and implement the recommendations of the Turkel Commission (hereinafter: "the Implementation Team").[7]

76. In its report of August 2015, the implementation team lent its support to this recommendation, noting that "… the crime of torture that shall be defined is expected to set a ban, along the lines of the crime of torture in the Convention against Torture, which includes causing pain or suffering, whether physical or mental, by a public official in order to extract information or a confession from someone, blackmail him, and such similar purposes that will be defined by the law. […] It should be noted that under the emerging model, which is still under internal review, some offenses will not be defined as independent offenses, but will be included in the draft by reference to existing offenses prescribed in the *Penal Law* or other offenses in the draft with aggravating circumstances …".

77. On July 3, 2016, the Israeli Security Cabinet[8] adopted the recommendations of the Implementation team, including the abovementioned recommendation.

78. Currently, following extensive discussions, the relevant authorities are in the final stages of drafting a Bill on the prohibition of torture.

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[5] For further details of the composition of the Turkel Commission and its mandate, please *see*: www.turkel-committee.gov.il

[6] http://www.turkel-committee.gov.il/files/newDoc3/The%20Turkel%20Report%20for%20website.pdf : "The Ministry of Justice should initiate legislation wherever there is a deficiency regarding international prohibitions that do not have a 'regular' equivalent in the Israeli Penal Law, and rectify that deficiency through Israeli criminal legislation. Thus, for example, the Ministry should ensure that there is legislation to transpose clearly into law and practice the absolute prohibition in international law of torture and inhuman and degrading treatment. This is in order to enable 'effective penal sanction' for those committing war crimes, as required by international law (Commission's Recommendation No. 1).".

[7] Government Resolution no. 1143 of the 33rd Government, "Appointment of the Team for the Review and Implementation of the Second Report of the Public Commission for the Examination of the Maritime Incident of May 31st 2010 (Regarding Israel's Mechanisms for Examining and Investigating Complaints and Allegations Concerning Claims of Violations of the Laws of Armed Conflict under According to International Law)" (January 5th 2014). www.pmo.gov.il/Secretary/GovDecisions/2014/Pages/dec1143.aspx.

[8] http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokeTirkel030716.aspx.

The Defense of Necessity

79. As in many other legal systems, the necessity defense, as stipulated in Section 34 (11) of the *Penal Law*, is one of the defense claims afforded to a defendant in criminal proceedings in Israel. In H.C.J 5100/94 *The Public Committee against Torture et. al. v. The State of Israel et. al.* (6.9.99), the High Court of Justice held that this defense could apply to a defendant accused of using unnecessary or excessive physical pressure.

80. The petition referred to in paragraph 370 of Israel's 4th Periodic report, in which the High Court of Justice is requested to order the initiation of a criminal investigation into the interrogation conducted against the petitioner, is still pending.

Audio or Visual Documentation of Interrogation

81. The Turkel Commission also recommended that there be full visual documentation of the ISA interrogations, according to rules that will be determined by the Attorney General in coordination with the Head of the ISA (Second Report, recommendation No. 15).

82. In this regard, the Implementation Team recommended that cameras be installed in all ISA interrogation rooms. According to the recommendation, these cameras are to broadcast, regularly and in "real-time", via closed-circuit to a control room located in an ISA facility in which interrogations are not conducted. The broadcast is to be accessible and available to a supervising entity on behalf of the Ministry of Justice at any time without prior notice. The supervising entity is to prepare a concise memorandum, but no record will be kept of the video transmission. The interrogators will have no indication of when the supervising entity is watching them in the control room. In the event that the supervising entity believes that illegal means have been used during the interrogation, it has an obligation to immediately report the matter to the Inspector for Complaints against ISA Interrogators in the Ministry of Justice. This outline is acceptable to the Head of the ISA and the Attorney General.

83. As mentioned above, the Israeli Security Cabinet adopted the recommendations of the Implementation team. Consequently, the Ministry of Justice is currently conducting the staff work required in order to implement this recommendation. The Ministry of Public Security and the Police have agreed that this outline will also apply to security interrogations conducted by the Police, subject to certain adjustments.

84. Today, the *Criminal Procedure Law (Investigation of Suspects)* 5762-2002 requires that the Israel Police carry out audio or visual recording of criminal suspect questioning (Sections 7 and 11), where the crime carries a penalty of imprisonment of ten or more years. However, a temporary provision in the law, which has been extended several times, states that this obligation to document does not apply to a police investigation of a suspect relating to a security offense and that the provisions of the law do not apply to interrogations by the ISA.

85. Recently, the Knesset approved Amendment No. 8 to the *Criminal Procedure (Interrogation of Suspects) Law* whereby the outline for the audio-visual documentation of ISA interrogations will also be applied to security interrogations conducted by the Police, subject to certain adjustments. According to this Amendment, the obligation to carry out audio or visual recordings of criminal suspect investigations will not apply to a police interrogation of a suspect in a security offence. Instead, the Amendment requires random inspections and supervision of these interrogations according to police procedures that are to be approved by the Minister of Public Security and the Attorney General. The Amendment provides that the supervising authority will be allowed to conduct such inspections in regard to all ongoing interrogations, at any time, without any advance notice and without the interrogators being aware of such inspections. The Amendment also added the requirement that the Ministers of Public Security and Justice report annually to the

Knesset's Constitution, Law and Justice Committee on the implementation of this Amendment. This Amendment will enter into force six months after the day of its publication (June 22, 2017). The first Annual report is scheduled for July 1, 2018.

86. Following the legislation of the temporary provision of June 2015, several non-governmental organizations filed a petition to the High Court of Justice, *inter alia*, against the constitutionality of this temporary provision (H.C.J 5014/15 *Adalah v. The Minister of Public Security*). Given the developments outlined above, this petition is still pending. A supplementary response is to be submitted to the Court on January 31, 2017.

Concluding Observation no. 19

GOI Reply

87. The State of Israel attaches great importance to strengthening and promoting the protection granted to minors in the military justice system in the West Bank, while simultaneously taking into consideration the unique circumstances and security situation in the West Bank. This is reflected in both legislation and practice.

88. The severity of the crimes committed by the Palestinian minors and their often ideologically-motivated nature create a unique set of demands from the criminal justice system. Terrorist organizations work to instill a sense of hatred through the indoctrination of children starting in pre-school and continuing all the way through adulthood, using children to advance their political goals. This education leads to many violent acts towards security forces and civilians, including throwing stones and Molotov cocktails and terrorist attacks using knives. 70-75% of crimes committed by the youth of the West Bank are violent.

89. The lack of cooperation on the part of the Palestinian Authority should also be noted, since it makes it almost impossible to provide alternatives to detention.

90. The Israeli judicial systems, as well as all law enforcement agencies, are committed to upholding the rights of minors. In addition, the relevant authorities investigate any complaint and/or allegations of ill-treatment or infringement of minor's rights.

91. Since 2008, an inter-ministerial team headed by the Deputy Attorney General (Criminal Law) has been tasked with assessing and reforming policies with regard to minors in the West Bank. As a result of these efforts, criminal law and practice regarding minors in the West Bank have undergone significant reform. These include:

- The establishment of a Juvenile Military Court;
- Raising the age of majority to 18;
- Introducing a special statute of limitation for minors;
- Improving notification to the family of the minor and to the minors themselves regarding their rights;
- Reducing detention periods.

92. In regard to the issue of reducing detention periods, please note constitutional budgetary difficulties are currently hampering the ability to reduce detention periods but this issue is constantly being reviewed. On January 7, 2016, the State notified the Court that the issue of resources required for further reducing some of the detention periods has not yet been resolved and that the Attorney General had requested the immediate and urgent involvement of the Ministers of Defense, Finance and Public Security in this matter. On December 26, 2016, with the agreement of the Attorney General, the Court issued an *order*

nisi requiring the State's response to the petition. (*HCJ 4057/10 The Association for Civil Rights in Israel v. IDF Commander in Judea and Samaria*).